

Assembly Bill No. 1841

CHAPTER 243

An act to amend Sections 56021.1 and 56346 of the Education Code, relating to special education.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1841, Buchanan. Special education: parental consent.

(1) Existing law, in defining the term "consent" for purposes of the provision of special education and related services to individuals with exceptional needs, includes in that definition a statement that a parent or guardian understands that granting consent is voluntary and he or she may revoke that consent at any time. Existing law provides that revocation of consent is not retroactive to negate an action that occurred after consent was given and prior to the revocation.

This bill, in addition, would provide that a public agency is not required to amend the education records of a child to remove any reference to the child's receipt of special education and services if the child's parent or guardian submits a written revocation of consent after the initial provision of special education and related services to the child.

(2) Existing law requires a local educational agency that is responsible for providing a free appropriate public education and related services to a child with a disability to make reasonable efforts to obtain informed consent from the parent of the child before providing special education and related services to the child, as specified. Existing law requires a local educational agency to file a request for due process, as specified, if the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past.

This bill would delete that latter requirement and, pursuant to a specified federal regulation, instead would prohibit a public agency, in the event that the parent or guardian of a child submits a written revocation of his or her consent at any time subsequent to the initial provision of special education and related services to the child, from continuing to provide special education and related services to the child or from using specified procedural safeguards to obtain agreement or a ruling that the services may be provided to the child. The bill would require the public agency to provide prior written notice to the child's parent or guardian, as specified, before ceasing the provision of the special education and related services. The bill would require that a public agency be deemed in compliance with the requirement to make a free appropriate public education available to a child if the agency ceases

to provide the child with further special education and related services pursuant to these provisions. The bill would provide that a public agency is not required to convene an individualized education program team meeting or develop an individualized education program for the child for further provision of special education and related services.

The people of the State of California do enact as follows:

SECTION 1. Section 56021.1 of the Education Code is amended to read: 56021.1. “Consent,” as provided in Section 300.9 of Title 34 of the Code of Federal Regulations, means all of the following:

(a) The parent or guardian has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.

(b) The parent or guardian understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; and the consent describes that activity and lists the records, if any, that will be released and to whom.

(c) The parent or guardian understands that the granting of consent is voluntary on the part of the parent or guardian and may be revoked at any time. If a parent or guardian revokes consent, that revocation is not retroactive to negate an action that has occurred after the consent was given and before the consent was revoked. A public agency is not required to amend the education records of a child to remove any reference to the child’s receipt of special education and services if the child’s parent or guardian submits a written revocation of consent after the initial provision of special education and related services to the child.

SEC. 2. Section 56346 of the Education Code is amended to read:

56346. (a) A public agency, as defined in Section 56028.5, that is responsible for making a free appropriate public education and related services to the child with a disability under this part shall seek to obtain informed consent from the parent of the child before providing special education and related services to the child pursuant to Section 1414(a)(1)(D)(i)(II) of Title 20 of the United States Code. The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child in accordance with Section 300.300(b)(2) of Title 34 of the Code of Federal Regulations.

(b) If the parent of the child fails to respond or refuses to consent to the initiation of services pursuant to subdivision (a), the public agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506 in order to obtain agreement or a ruling that the services may be provided to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide the consent, both of the following are applicable:

(1) The public agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the public agency requests consent.

(2) The public agency shall not be required to convene an individualized education program team meeting or develop an individualized education program under this part for the child for the special education and related services for which the public agency requests consent.

(d) (1) Pursuant to Section 300.300(b)(4) of Title 34 of the Code of Federal Regulations, if the parent or guardian of a child submits a written revocation of his or her consent pursuant to this section at any time subsequent to the initial provision of special education and related services to the child, the public agency shall not do either of the following:

(A) Continue to provide special education and related services to the child, but shall provide prior written notice to the child's parent or guardian in accordance with Section 56500.4 before ceasing the provision of the special education and related services.

(B) Use the procedural safeguards specified in Chapter 5 (commencing with Section 56500), including mediation and the due process complaint procedures, to obtain agreement or a ruling that the services may be provided to the child.

(2) A public agency shall be deemed in compliance with the requirement to make a free appropriate public education available to a child if the agency ceases to provide the child with further special education and related services pursuant to this subdivision. A public agency is not required to convene an individualized education program team meeting or develop an individualized education program pursuant to this article for the child for further provision of special education and related services.

(e) If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the individualized education program, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the child.

(f) With the exception of a parent of a child who fails to respond pursuant to subdivision (b), or refuses to consent to services pursuant to subdivision (b), if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the public agency agree otherwise.

(g) In accordance with Section 300.300(d)(4)(i) of Title 34 of the Code of Federal Regulations, if the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial assessment or the reassessment, or the parent fails to respond to a request to provide consent, the public agency shall not use the consent override procedures described in Section 300.300(a)(3) and (c)(1) of Title 34 of the Code of Federal Regulations. The public agency is not required to consider the child as eligible for services under Article 5.6 (commencing with Section 56170) of Chapter 2.